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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,240	01/14/2002	Thomas M. Snyder	10011139-1	5550
7590	03/24/2005		EXAMINER	
AGILENT TECHNOLOGIES, INC.			TRAN, TUAN A	
Legal Department, DL429 Intellectual Property Administration P.O. Box 7599 Loveland, CO 80537-0599			ART UNIT	PAPER NUMBER
			2682	
DATE MAILED: 03/24/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/047,240	SNYDER ET AL.	
	Examiner Tuan A Tran	Art Unit 2682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 October 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13 and 15-67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-13, 15-30, 32-61 and 63-66 is/are allowed.
- 6) Claim(s) 31, 62 and 67 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 31 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osborne (6,088,588) in view of Zhang (2001/0049263).

Regarding claim 31, Osborne discloses a method for monitoring, measuring and capturing transactions in a communication network experienced by a user of a communication device operating in a communication network. The method comprises: monitoring a plurality of transactions (call connection events) occurring between a user of a communication device operating in a communication network and the communication network in accordance with a functional definition of a probe element (software) of the communication device, the transactions are a portion of the user's interaction with the communication network via the communication device; capturing the transactions in accordance with the functional definition of the probe element; measuring characteristic of the transactions to generate user interaction data (event failure or related information) in accordance with the functional definition of the probe element (See col.1 lines 12-25, col. 2 lines 18-44 and col. 4 line 58 to col. 5 line 8); transmitting the user interaction data to the communication network in response to the functional definition of the probe element and a request from the communication

network; and analyzing the user interaction data to identify network performance problems of the communication network (See col. 2 lines 5-11), wherein the plurality of communication devices comprises communication terminals and wherein transmitting the user interaction data to the communication network comprising transmitting the user interaction data to a collection communication terminal (a base station) of the plurality of communication terminals which transmits the user interaction data to a server of a network operator of the communication network (See col. 2 lines 5-11). However, Osborne does not disclose that the functional definition of the probe element can be dynamically and remotely configured by the communication network via communication link between the communication device and the communication network. Zhang discloses a method for monitoring , measuring and capturing transactions in a communication network experienced by a user of a communication device operating in the communication network comprising dynamically and remotely configuring the functional definition of a probe element of a communication device by the communication network via communication link between the communication device and the communication network (See page 3 [0026]). Since both Osborne & Zhang teach about methods for monitoring the performance of the communication network; therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Osborne with Zhang for the advantage of allowing the communication network to remotely modify which aspects and features of the communication device's operation are to be monitored and reported.

Claim 62 is rejected for the same reasons as set forth in claim 31.

2. Claim 67 is rejected under 35 U.S.C. 103(a) as being unpatentable over Osborne (6,088,588) in view of Zhang (2001/0049263) and further in view of Loomis et al. (5,625,668).

Regarding claim 67, Osborne discloses a method for monitoring, measuring and capturing transactions in a communication network experienced by a user of a communication device operating in a communication network. The method comprises: monitoring a plurality of transactions (call connection events) occurring between a user of a communication device operating in a communication network and the communication network in accordance with a functional definition of a probe element (software) of the communication device, the transactions are a portion of the user's interaction with the communication network via the communication device; capturing the transactions in accordance with the functional definition of the probe element; measuring characteristic of the transactions to generate user interaction data (event failure or related information) in accordance with the functional definition of the probe element (See col.1 lines 12-25, col. 2 lines 18-44 and col. 4 line 58 to col. 5 line 8); transmitting the user interaction data to the communication network in response to the functional definition of the probe element and a request from the communication network; and analyzing the user interaction data to identify network performance problems of the communication network (See col. 2 lines 5-11), wherein the plurality of communication devices comprises communication terminals and wherein transmitting the user interaction data to the communication network comprising transmitting the user

interaction data to a collection communication terminal (a base station) of the plurality of communication terminals which transmits the user interaction data to a server of a network operator of the communication network (See col. 2 lines 5-11). However, Osborne does not disclose that the functional definition of the probe element can be dynamically and remotely configured by the communication network via communication link between the communication device and the communication network and the user interaction data comprises a position data from a GPS system of the mobile terminal. Zhang discloses a method for monitoring, measuring and capturing transactions in a communication network experienced by a user of a communication device operating in the communication network comprising dynamically and remotely configuring the functional definition of a probe element of a communication device by the communication network via communication link between the communication device and the communication network (See page 3 [0026]). Loomis teaches a mobile terminal 142 reporting position data from the GPS system of the terminal to the communication network. Since both Osborne & Zhang teach about methods for monitoring the performance of the communication network; therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Osborne with Zhang and further with Loomis for the advantage of allowing the communication network to remotely modify which aspects and features of the communication device's operation are to be monitored and reported as well as locating troublesome area or mobile terminal in the communication network that needs to be repaired.

***Response to Arguments***

Applicant's arguments with respect to claims 31 and 62 have been considered but are moot in view of the new ground(s) of rejection.

***Allowable Subject Matter***

Claims 1-13, 15-30, 32-61 and 63-66 are allowed.

The following is an examiner's statement of reasons for allowance:

The Applicant's response filed on 10/29/2004 (See Remark, page 18-24), clearly states the inventive steps of the instant application.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

Art Unit: 2682

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Tuan Tran** whose telephone number is **(703) 605-4255**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Vivian Chin**, can be reached at **(703) 308-6739**.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

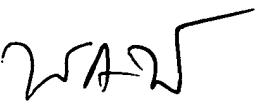
Washington, D.C. 20231

**or faxed to:**

**(703) 872-9314 (for Technology Center 2600 only)**

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

  
Tuan Tran

  
VIVIAN CHIN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600

3/21/05

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